IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 1ST JANUARY 2007 / 11TH PAUSHA 1928

WP(C).No. 24676 of 2004(K)

PETITIONER:

K.A.SURESH,
KANDEMKATTU VEEDU, ANAPPARA,
RAMAVARMAPURAM, THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

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1. **THE INDUSTRIAL TRIBUNAL, PALAKKAD.**

2. **THE PRESIDENT,**
   THRISSUR ENGINEERING COLLEGE CO-OPERATIVE
   SOCIETY LTD. R.51, THRISSUR.

3. **THE SECRETARY,**
   THRISSUR ENGINEERING COLLEGE CO-OPERATIVE
   SOCIETY LTD. R.51, THRISSUR.

BY ADV. SRI.K.PADMANABHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P. (C) No. 24676 OF 2004 K

Dated this the 1st day of January, 2007

J U D G M E N T

The petitioner is the workman involved in I.D. No.83/2002. He is challenging Ext.P1 award passed by the Industrial Tribunal, Palakkad in that I.D. The issue referred for adjudication was as follows:

> *" Whether the dismissal of Sri.K.A.Suresh, Peon, by the management of Thrissur Engineering College Co-operative Society Ltd. is justifiable and if not what relief he is entitled to get."*

The workman was found guilty of temporary misappropriation in an enquiry conducted by the management. However, the Industrial Tribunal set aside the enquiry and gave opportunity to the management to adduce evidence. On the evidence adduced before it, the Industrial Tribunal found that the management has not succeeded in proving the guilt of the workman and, therefore, set aside the dismissal, which was the punishment imposed on the petitioner by the management but confined the relief granted to the petitioner to compensation amounting to Rs.10,000/-.

2. The counsel for the petitioner challenges the award on the ground that after having found the petitioner not guilty of the misconduct

alleged against him, the Tribunal went wrong in not directing the reinstatement with back wages and confining the relief to granting of compensation of Rs.10,000/-.

3. I have considered the rival contentions in detail.

4. In this connection, I am not even satisfied that the finding of the Industrial Tribunal is sustainable because of its own specific finding in paragraph 6 of the award, which reads as under:

> *" The two witnesses of the management who have given evidence against the workman are Assistant Professors, who had been honorary Secretaries of the management-society in different periods. During the tenure of first witness, the workman committed the misconduct of temporary misappropriation by not remitting the amounts immediately on encashment of the treasury bills of the society members who are the teaching staff of the Thrissur Government Engineering College. There is no reason to disbelieve the statement given by this Asst. Professor. His statement in this regard is also supported by some documents produced in the enquiry."*

Going by the said finding, I am of opinion that the Industrial Tribunal could not have entered any other finding than the guilt of the petitioner. But accepting the contention of the workman that he had entrusted the cash to another salesman the petitioner was absolved from the guilt. But once temporary misappropriation of the petitioner has been proved as found in paragraph 6, it was for the workman to prove entrustment of the cash to another salesman. Further, even if that

contention was accepted as correct, even then, the petitioner's guilt cannot be said to be any the less since his duty was not to entrust the cash to another salesman but to the appropriate authorities. Probably it is taking into account all these aspects that in view of the illegalities and irregularities in the termination of the service of the workman, the Industrial Tribunal confined the relief to the workman to compensation of Rs.10,000/- on the ground that the management is lost the confidence in the workman.

5. Although the counsel for the petitioner strongly argued that there is no evidence whatsoever to prove loss of confidence in the workman, which was the reason stated for not ordering reinstatement, I am not inclined to accept the said contention in view of the specific finding of the Industrial Tribunal itself in paragraph 6 of the award. In the above circumstances, I do not find any merit in the writ petition and accordingly the same is dismissed.

(S. SIRI JAGAN, JUDGE)

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